



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE UNDER SECRETARY

August 2, 2019

Christopher S. Shultz
Chief Deputy Director
State of California, Department of Consumer Affairs
1625 North Market Blvd.
Sacramento, CA 95834

Dear Mr. Shultz:

Thank you for your letter dated July 26, 2019, regarding the State of California's efforts to comply with the U.S. Department of Education's (Department) 2016 regulations governing State Authorization of Distance and Correspondence Education providers. Your letter was referred to me for a response, and I am pleased to respond.

As you know, the United States District Court for the Northern District of California has directed the Department to implement the 2016 regulations, and the Department is encouraged that the State of California has taken steps to comply with the rule. As your letter provides only a high-level overview of a vaguely defined new process, however, we are concerned that certain aspects of the plan do not comply with the 2016 regulations that the Court has directed that the Department implement.

As stated in the 2016 Notice of Proposed Rulemaking (NPRM):

We have previously stated that, with respect to institutions subject to 34 CFR 600.9(a), State authorization for an institution must include a process where the State reviews and appropriately acts on complaints arising under State law (75 FR 66865–66, Oct. 29, 2010). We further clarified in Dear Colleague Letter GEN–14–04 that, while a State may refer the review of complaints concerning an institution to another entity, the final authority to ensure that complaints are resolved timely is with the State. Similarly, we believe that States should also play an important role in the protection of students who enroll in postsecondary educational programs provided through distance education or correspondence courses. Therefore, just like institutions physically located in a State, in order for an institution offering postsecondary educational programs through distance education or correspondence courses to students residing in one or more States in which the institution is not physically located to be considered legally authorized in those States, the institution would need to document that there is a State complaint process in each State in which the students reside. This State process must include steps to review and appropriately act in a timely manner on complaints by any of those students

400 MARYLAND AVE. SW, WASHINGTON, DC 20202
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concerning the institution, including enforcing applicable State law. Students enrolled in programs offered through distance education or correspondence courses would therefore be able to access a complaint process under *both* current § 600.9(a)(1), which requires a process in the State in which the institution is physically located, and proposed § 600.9(c)(2), which requires a process in a student's State of residence. Because a State authorization reciprocity agreement may also designate a State process for these complaints, an institution could alternatively show that it was covered by that agreement's process for resolving complaints.

81 Fed. Reg. 48598, 48602 (July 25, 2016) (emphasis added). Similarly, in response to comments suggesting that a State could satisfy the new distance education complaint process requirement in 34 CFR § 600.9(c)(2) by reference to the complaint process in the home state of the institution, the Department rejected those comments and did not change the proposed regulation. 81 Fed. Reg. 92232, 92238 (December 19, 2016).

To the extent that the process proposed by California involves simply referring a complaint to an institution's accrediting agency or another agency in the State in which the institution is located, it does not appear to comply with the 2016 regulations. It would be difficult for an accrediting agency or an agency in another State to enforce applicable California laws, and without participating in a reciprocity agreement, California could not simply refer student complaints to the State in which the institution has a physical presence. Moreover, it appears that in some instances you would be depending upon non-California entities, such as accreditors or other States, to "investigate and resolve" a complaint. Although this may be permissible by mutual agreement, the 2016 regulations require the State of California to lead the investigation and resolve it in a timely manner.

Under the 2016 regulations, for institutions without a physical presence in California to disburse Title IV aid to distance education or correspondence students who reside in California, the State of California must rely on a state agency, such as the Bureau for Private Postsecondary Education, the Attorney General, or some other state entity to enforce applicable California law and resolve student complaints based on those laws. Although California could seek information from accreditors or other states or could request that other states participate in the review of the student complaint, the 2016 regulations require that a California State agency oversee the investigation of a student complaint and issue a final determination to resolve that complaint.

Although the State of California's proposed plan presents compliance challenges, we are pleased that, based on the consensus language achieved during the Department's 2019 negotiated rulemaking effort regarding State Authorization of Distance and Correspondence Education, institutions will be provided greater flexibility in the future to rely on the complaint process of the State in which the institution is located in the event that the State in which the student is located has no relevant complaint process in place. Accordingly, to avoid the disruption in educational programs for California students adversely affected by the 2016 regulations and so as to provide a bridge for institutions serving these students to the new 2019 regulations, which the Department

intends to publish for early implementation as soon as possible, the Department will assume that California will modify its plan to refer student complaints to a California State agency for adjudication until such time as early implementation occurs. The Department will also assume that, under this modification, the State of California will require a California State agency to oversee the investigation of the student complaint and resolve it, according to applicable California State law. Finally, the Department will assume that the new complaint process will allow complaints regarding issues that arose previously, back at least to the date that the 2016 regulations went into effect. With those modifications made, the Department will consider California to have had an acceptable plan in place dating back to May 26, 2019. Thus, no student will experience an interruption in his or her education or federal student aid.

The Department stands ready to assist you with this effort, both before and after the consensus 2019 regulations take effect. If you have any questions, please feel free to call me at (202) 453-7733.

Sincerely,

/s/

Diane Auer Jones
Principal Deputy Under Secretary
Delegated the Duties of Under Secretary